

28-71-1. Definitions. ~~For the purposes of these regulations, the following definitions shall apply.~~ In addition to the terms defined in K.S.A. 65-34,162 and amendments thereto, each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) ~~"Adjacent property" means property that is impacted by contamination from an off-property source or property that is contiguous to a contaminated property.~~

(b) ~~"Anthropogenic levels" means concentrations of chemicals or substances that are present in the environment due to human activity.~~

(c) ~~(b) "Class one contamination (Class I)" means that~~ and "class I" mean that suspected or confirmed contamination ~~is determined to exist~~ exists on the eligible property described in the application, and but the eligible property is not a source of the contamination ~~or is located adjacent to a property with a known source of contamination.~~

(d) ~~"Class two contamination (Class II)" means that suspected or confirmed soil contamination is determined to exist on the eligible property, there is no known or suspected soil contamination emanating off the eligible property, and there is no known or suspected groundwater contamination.~~

(e) ~~"Class three contamination (Class III)" means that suspected or confirmed soil or groundwater contamination, or both, is determined to exist on the eligible property, and there is no known or suspected soil or groundwater contamination that has migrated off the eligible property.~~

(f) ~~(c) "Class four two contamination (Class IV)" means that~~ and "class II" mean that suspected or confirmed soil or groundwater contamination, or both, resulting from operations

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that have occurred on the property is suspected or is determined to exist exists on and or off the eligible property described in the application, or both.

~~(g)~~ (d) “Days” means calendar days unless otherwise specified. Documents due on the weekend or a holiday shall be submitted on the first working day after the weekend or holiday.

~~(h)~~ (e) “Enforcement action” means an administrative or judicial claim made by a governmental agency pursuant to state, federal, or common law against the property described in the application, which enforcement action is based upon the contaminants ~~sought~~ to be cleaned up under ~~this program~~ the VCPRP.

~~(i)~~ (f) “Environmental site assessment” means an investigation of a property, ~~conducted by a qualified environmental professional performed in accordance with standard industry practices~~, that identifies and defines recognized environmental conditions at the property.

(g) “Environmental use control” has the meaning specified in K.S.A. 2016 Supp. 65-1,222, and amendments thereto.

~~(j)~~ (h) “Hazard index value” means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both.

~~(k)~~ (i) “Hazard quotient” means the ratio of a single substance exposure level over a specified time period to a reference dose for that substance derived from a similar exposure period.

~~(l)~~ (j) “Institutional control” means a legal mechanism that limits access to or use of property, or warns of a hazard, the purpose of which is to ensure the protection of human health and the environment.

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~~(m)~~ (k) “Maximum contaminant level (MCL)” ~~means the maximum permissible level of~~
~~a contaminant in water that is delivered to any user of a public water system as described in~~
~~K.A.R. 28-15-13, subsections (b) and (e) and “MCL” have the meaning specified for “maximum~~
~~contaminant level” in K.A.R. 28-16-28b.~~

~~(n)~~ (1) “Naturally occurring levels” means ambient concentrations of chemicals or
substances present in the environment that are typical of background levels near the ~~eligible~~
property subject to the voluntary agreement when not affected by the identified contamination
source.

~~(o)~~ (m) “Nonresidential property” means any property that does not ~~exclusively~~ meet the
definition of residential property.

~~(p)~~ (n) “Person” means an individual, firm, corporation, association, partnership,
consortium, joint venture, commercial entity, state agency, unit of local government, school
district, federal agency, tribal entity, interstate body, or other legal entity.

~~(q)~~ (o) “Potable water” ~~is as defined~~ has the meaning specified in K.A.R. 28-16-28b,
paragraph ~~(b)~~(32).

~~(r)~~ “~~Qualified environmental professional~~” ~~means an individual who demonstrates to the~~
~~satisfaction of the department that the individual, through academic training, occupational~~
~~experience, reputation, or other credentials, can objectively conduct one or more aspects of an~~
~~environmental site assessment.~~

~~(s)~~ (p) “Remedial action” means those actions taken to address the effects of a release of
a contaminant, so that it does not cause a significant risk to present or future public health

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or welfare, or to the environment.

(~~+~~) (q) “Remediation” means the act of implementing, operating, and maintaining a remedial action.

(~~u~~) (r) “Residential property” means any property currently used or proposed for use as one of the following:

(1) A residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or

(2) a public use area, including a school, educational center, day care center, playground, unrestricted outdoor recreational area, or park.

(s) “Risk management plan” has the meaning specified in K.S.A. 2016 Supp. 65-34,176, and amendments thereto.

(~~v~~) (t) “Voluntary cleanup and property redevelopment program (VCPRP)” ~~means and~~ “VCPRP” mean the implementation of the voluntary cleanup and property redevelopment act, as defined in K.S.A. ~~1997 Supp.~~ 65-34,161 et seq., and amendments thereto, by the department.

(~~w~~) (u) “Voluntary party” means an applicant whose property is determined by the secretary to be eligible for the voluntary cleanup and property redevelopment program.

(Authorized by K.S.A. ~~1997 Supp.~~ 65-34,163; implementing K.S.A. ~~1997 Supp.~~ 65-34,164 ~~through~~, K.S.A. 65-34,165, K.S.A. 65-34,166, K.S.A. 2016 Supp. 65-34,167, K.S.A. 2016 Supp. 65-34,168, K.S.A. 2016 Supp. 65-34,169, and K.S.A. 65-34,172; effective June 26, 1998;
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28-71-2. Applicant. ~~An~~ Each applicant shall include a person ~~who~~ that has title, control, or access to the property described in the application and is one of the following:

- (a) A person who owns the property;
- (b) a person who operates a facility located on the property;
- (c) a person who previously owned, operated, or otherwise controlled activities on the property;
- (d) a prospective owner of the property;
- (e) a prospective operator of a facility located on the property;
- (f) a person or generator of hazardous or solid waste who by contract, agreement, or otherwise, directly or indirectly, arranged for the disposal of contaminants at the property;
- (g) a person who legally controls the property; or
- (h) any unit of government that acquired title or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances. (Authorized by K.S.A. ~~1997-Supp.~~ 65-34,163; implementing K.S.A. ~~1997-Supp.~~ 65-34,164; effective June 26, 1998; amended P-_____.)

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28-71-3. Eligibility determination. (a) The property described in the application shall contain an actual, threatened, or suspected release of a contaminant or be impacted or threatened by contaminants from an off-property source.

(b) Properties that may be eligible for application to ~~the voluntary cleanup and property redevelopment program~~ VCPRP shall include the following:

(1) Properties that have been assessed by the United States environmental protection agency, its contractors and agents, and the department, if the property meets the additional criteria ~~defined in~~ required by K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, and ~~these regulations~~ this article of the department's regulations;

(2) contaminated properties that are currently under an existing department order or agreement, upon completion of the actions required by the department order or agreement, if the property meets the additional criteria ~~as defined in~~ required by K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto, ~~and~~ . The determination of completion of the actions required by the order or agreement shall be made by the ~~department~~ secretary;

(3) portions of a larger property that have or require a resource conservation and recovery act (RCRA) permit, but these portions do not require a permit in accordance with RCRA, which contains a corrective action component, as determined by the ~~department~~ secretary, if the property meets the additional criteria ~~as defined in~~ required by K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto;

(4) portions of a larger property that includes oil and gas activities regulated by the state corporation commission, but the specific portion is not regulated by the state corporation commission, if the property meets the additional criteria ~~defined in~~ required by K.S.A. 1997

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~~Supp.~~ 65-34,161 et seq., and amendments thereto; and

(5) contaminated properties that are not statutorily excluded. (Authorized by K.S.A.
~~1997 Supp.~~ 65-34,163; implementing K.S.A. ~~1997 Supp.~~ 65-34,164; effective June 26, 1998;
amended P- _____.)

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28-71-4. Application process. (a) Each applicant shall submit to the department a complete application consisting of the following:

- (1) An application form; provided by the department;
- (2) a nonrefundable application fee of \$200.00; and
- (3) all documentation that supports the application, including environmental site

assessments, investigation reports, or both.

(b) Determination of whether ~~or not~~ the property ~~defined~~ described in the application is eligible for participation in the ~~program~~ VCPRP shall be made by the ~~department, secretary~~ pursuant to K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto. ~~The applicant shall be notified by the department in writing of the determination, not more than 60 days after the department receives a complete application or reapplication.~~

(c) ~~In the event that the initial application is determined by the department to be incomplete, a written notice stating why the application is incomplete shall be returned to the applicant by the department. The applicant shall submit a revised application package to address the concerns of the department if the initial application is determined by the department to be incomplete.~~

(d) ~~In the event the department determines that the revised application package is still incomplete, written notice shall be provided by the department to the applicant, who shall submit a second application fee of \$200.00 and a revised application package. The applicant may submit an additional revised application package if the revised application is determined by the department to be incomplete. The applicant shall submit an additional application fee of \$200 with the additional revised application.~~ (Authorized by ~~and implementing~~ K.S.A. 1997 Supp. 65-

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34,163; implementing K.S.A. ~~1997 Supp.~~ 65-34,164 and 65-34,165; effective June 26, 1998;
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28-71-5. Classification determination. (a) ~~An initial classification of contamination for eligible properties shall be determined by the department.~~

(b) ~~For the purposes of this regulation, properties shall be placed into one of four contamination classes, as defined in K.A.R. 28-71-1.~~

(c) ~~The department's classification determination shall be conveyed to the voluntary party with written notification of eligibility.~~

(d) ~~The contamination classification of an eligible property shall be determined by the department based on the following criteria: Each applicant shall include the following documentation for consideration by the secretary in determining placement of the property described in the application into one of two contamination classes, as defined in K.A.R. 28-71-1:~~

(1) The application and associated documentation that supports the voluntary party's application;

(2) review of available technical bulletins and scientific documents describing the geology and geohydrology of the property and surrounding area; and

(3) scientific information relating to the toxicity, mobility, persistence, and other characteristics of the contaminants suspected or identified at a property.

(e) ~~For the purposes of selecting an appropriate level of work necessary to achieve the objectives as defined in K.A.R. 28-71-9, determination of which contamination classification an eligible property falls into shall be made by the department.~~

(f) ~~Throughout the time the eligible property is participating in the program, the contamination classification of an eligible property may be adjusted by the department to a lower contamination classification or a higher contamination classification, depending on additional~~

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~~information obtained.~~

(b) Any applicant may provide additional information to support a reclassification of property subject to the voluntary agreement. (Authorized by K.S.A. ~~1997 Supp.~~ 65-34,163; implementing K.S.A. ~~1997 Supp.~~ 65-34,165 and 65-34,166; effective June 26, 1998; amended P-_____.)

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28-71-6. Voluntary agreement. (a) Upon ~~departmental~~ the secretary's approval of the application for the voluntary cleanup and property redevelopment program, the voluntary party shall enter into a voluntary agreement with the ~~department~~ secretary. The voluntary agreement shall be developed by the department and submitted to the voluntary party for signature. The voluntary agreement shall ~~set forth~~ specify all of the terms and conditions for implementation of the work anticipated in the ~~program~~ VCPRP.

(b) Oversight, management, and review activities pertaining to the property shall not be commenced by the department until the voluntary agreement is signed by both the ~~department~~ secretary and the voluntary party.

(c) The voluntary agreement shall require the voluntary party to deposit one of the following with the department, as applicable:

(1) For class I, an initial amount, of \$2,000; or

(2) for class II, an initial amount not to exceed \$5,000.

(d) The voluntary agreement shall require the voluntary party to provide the department with access to the property at all reasonable times, upon reasonable notice to the voluntary party during all the activities conducted under K.S.A. ~~1997 Supp.~~ 65-34,161 et seq., and amendments thereto. (Authorized by K.S.A. ~~1997 Supp.~~ 65-34,163; implementing K.S.A. ~~1997 Supp.~~ 65-34,165; effective June 26, 1998; amended P-_____.)

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28-71-7. Initial deposit and reimbursement. (a) The initial deposit made by the voluntary party; ~~shall be based on the contamination classification of the property; shall be one of the following amounts described in the application.~~ The voluntary party shall submit quarterly payments upon billing for direct and indirect costs to maintain the voluntary party's account at a balance of at least \$1,000 for class I and at least \$2,000 for class II.

~~(1) Class I contamination shall not exceed \$1,000, based upon actual billing by the department.~~

~~(2) Class II contamination shall be \$3,000.~~

~~(3) Class III contamination shall be \$4,000.~~

~~(4) Class IV contamination shall be \$5,000.~~

~~(b) Oversight shall be~~ The voluntary party shall be subject to oversight performed by the department or its ~~consultants or~~ contractors. This oversight shall include the following:

~~(1) The review of documents, studies, and test results;~~

~~(2) any necessary administrative decision making by the department;~~

~~(3) collection of split samples, laboratory analysis, and sampling supplies;~~

~~(4) (3) travel;~~

~~(5) (4) per diem;~~

~~(6) (5) verification activities; and~~

~~(7) (6) associated indirect costs.~~

~~(e) The purpose of oversight of a voluntary party's performance by the department shall be to assure that the work is consistent with, and meets the requirements of, K.S.A. 1997 Supp. 65-34,161 et seq., and amendments thereto; applicable guidance, policies and procedures;~~

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~~and these regulations.~~ (Authorized by K.S.A. 1997-Supp. 65-34,163; implementing K.S.A. 1997
Supp. 65-34,165; effective June 26, 1998; amended P-_____.)

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28-71-8. Environmental site assessments. (a) ~~Each~~ environmental ~~assessments as defined in these regulations and~~ site assessment shall be prepared by a qualified environmental professional shall be accepted by the department an individual who possesses the education, experience, or licensure sufficient to prepare a competent environmental site assessment.

(b) ~~An~~ Each environmental site assessment shall include the following information regarding the property either described in the application or subject to a voluntary agreement:

(1) The legal description ~~of the site~~ and a map identifying the location, boundaries, and size of the property;

(2) the physical characteristics of the ~~site~~ property and areas contiguous to the ~~site~~ property, including the location of any surface water bodies and groundwater aquifers;

(3) the location of any water wells located on the property or in an area within a one-half mile radius of the property and a description of the use of the those wells;

(4) the operational history of the property, based upon the best efforts of the applicant and the current use of areas in the vicinity of the property;

(5) the present and proposed uses of the property;

(6) information concerning the nature and extent of any contamination;

(7) information on releases of contaminants that have occurred at the ~~site~~ property, including any environmental impact on areas in the vicinity of the property;

(8) any sampling results, evidence, or other data that characterizes the soil, groundwater, or surface water on the property; and

(9) a description of the human and environmental exposures to contamination at the property, based upon ~~the property's~~ current use and any future use proposed by the property

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owner as approved by the local zoning authority. (Authorized by K.S.A. ~~1997 Supp.~~ 65-34,163;
implementing K.S.A. ~~1997 Supp.~~ 65-34,165; and 65-34,166, ~~and 65-34,170~~; effective June 26,
1998; amended P-_____.)

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28-71-9. Voluntary cleanup work plans and reports. (a) Upon signature of the voluntary agreement by the voluntary party and the ~~department~~ secretary, the voluntary party shall submit each environmental ~~investigation report, assessment report, site assessment, investigation report,~~ or both, submitted by the voluntary party shall be reviewed for review by the department. ~~Determination of whether or not the investigation, assessment, or both, meet all the following objectives shall be made by the department. to determine whether the following objectives have~~ been met:

- (1) The sources for contaminants have been adequately identified and investigated.
- (2) The vertical and horizontal extent of contaminants has been determined.
- (3) The human health and environmental receptors have been identified.
- (4) The potential risks and impacts to receptors have been evaluated.
- (5) Quality assurance and quality control have been maintained.
- (6) The work has been performed in accordance with standard industry practices.

(b) ~~Based on the reports submitted by the voluntary party, a determination as to any required actions shall be made by the department.~~

(c) ~~Determination that further investigation is necessary to meet the objectives as defined in K.A.R. 28-71-9, subsection (a) may be made by the department. If this determination is made the secretary determines that further investigation is necessary to meet the objectives specified in subsection (a), the voluntary party shall submit a work plan to the department for review and approval a work plan for investigation. The work plan shall be based on a scope of work provided by the department. The work plan shall be reviewed by the department, and written comments for revisions or approval shall be provided by the department. After approval of the~~

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work plan by the ~~department~~ secretary, the following actions shall occur: :

(1) The voluntary party shall implement the ~~department approved~~ approved work plan for investigation.

(2) The voluntary party shall document and submit the results of the investigation in a report, ~~and the report~~ which shall be submitted to the department for review.

(3) ~~The report shall be reviewed by the department, and written comments for revision or approval shall be provided by the department.~~

(4) ~~A determination as to any further required actions based on the results of the approved investigation report shall be made by the department.~~

(d) ~~(c)~~ If it is ~~determined~~ the secretary determines that remediation is necessary to address, mitigate, ~~or both~~, the risks posed by the property subject to the voluntary agreement, the voluntary party shall submit a proposal for remediation to the department for review and approval ~~a proposal for remediation. The proposal for remediation shall be based on a scope of work provided by the department.~~ The proposal for remediation shall meet the following ~~objectives~~ requirements:

(1) Be protective of human health and the environment for documented present and proposed future land uses;

(2) meet applicable state standards ~~and guidelines~~ or ~~the results of~~ acceptable contaminant concentrations as determined by a risk analysis that evaluates the property subject to the voluntary agreement and surrounding properties as a whole and that is approved by the ~~department~~ secretary;

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(3) evaluate remedial alternatives that are proven reliable and are economically and technically feasible by completing the following activities:

(A) Comparing ~~a minimum of~~ at least two alternatives, not including the “no action” alternative; and

(B) documenting the ability of each remedial alternative to attain a degree of cleanup and control of contaminants established by the department; and

(4) provide a description and evaluation of the voluntary party’s proposed remedial alternative.

~~(e) The proposal for remediation shall be reviewed by the department, and written comments for either revision or approval shall be provided by the department within 45 days of submittal, unless the department extends the time for review to a date certain.~~

~~(f)~~ (d) If the ~~department~~ secretary approves the proposal for remediation, ~~then a cleanup plan shall be submitted by the applicant~~ shall submit a cleanup plan. The cleanup plan shall include the following:

- (1) A description of all tasks necessary to implement the preferred remedial alternative;
- (2) preliminary or final design plans and specifications of the preferred remedial alternative;
- (3) a description of all necessary easements and permits required for implementation of the cleanup;
- (4) an implementation schedule;
- (5) a plan to monitor the effectiveness of the cleanup during implementation; and

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(6) a verification plan to document that cleanup objectives have been achieved, which shall include sampling to be performed by the voluntary party, department, or both, as determined by the secretary.

~~(g) The cleanup plan shall be reviewed by the department, and written comments for either revision or acceptance shall be provided by the department within 30 days of submittal, unless the department extends the time for review to a date certain. If the department accepts the cleanup plan, a notice of the department's determination shall be published by the department, in accordance with K.A.R. 28-71-12.~~

~~(h) The cleanup plan shall be approved by the department if the plan is publicly accepted and if the plan attains a degree of cleanup and control of contaminants that are protective of human health and the environment.~~

~~(i) If the cleanup plan is not approved by the department, the voluntary party shall be provided with the reasons for denial, in writing, by the department.~~

~~(j) Upon receipt of written assurance that the cleanup plan has been completed, a verification sampling program, approved by the department, shall be conducted by the department and the voluntary party, to confirm that the property has been addressed as described in the cleanup plan. Conducting verification activities, allowing the voluntary party to conduct these activities, or requesting that both the department and voluntary party collectively conduct these activities may be selected by the department. (Authorized by K.S.A. 1997 Supp. 65-34,163; implementing K.S.A. 1997 Supp. 65-34,166, K.S.A. 2016 Supp. 65-34,167, and K.S.A. 2016 Supp. 65-34,168; effective June 26, 1998; amended P- _____.)~~

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28-71-10. "No further action" ~~determinations~~ determination. (a) For the purposes of this ~~regulation~~ the regulations in this article of the department's regulations, the term "no further action" determination ~~means~~ shall mean that the ~~department~~ secretary has determined, pursuant to K.S.A. 1997 Supp. 65-34,161 et seq.; and amendments thereto, that no further action is necessary at the property subject to the voluntary agreement.

(b) ~~The "no further action" determination by the department shall be made on properties where either of the following applies.~~

~~(1) Contamination was detected during the environmental assessment, department-approved investigation, or both, but contamination levels present no significant risk to human health and the environment, and those levels are less than applicable federal or state standards.~~

~~(2) The property has been remediated, as approved by the department, in a cleanup plan and confirmed with verification sampling as defined in K.A.R. 28-71-9.~~

~~(c) "No further action" determinations shall contain the appropriate disclaimers and limitations for the specific circumstances at the property.~~

~~(d) A "no further action" determination may be issued by the department with the following conditional terms:~~

~~(1) To allow for long-term monitoring of contamination; or~~

~~(2) to provide for further action in the event that department-approved cleanup levels are exceeded at property boundaries; or~~

~~(3) both paragraphs (d)(1) and (d)(2).~~

~~(e) A "no further action" determination may be issued by the department to properties when no contamination is indicated, based on a department-approved application, environmental~~

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~~assessment, or investigation reports submitted by the voluntary party. The environmental assessment or investigation shall document that the past and current use of the property has not contributed to contamination of soils, surface water or groundwater.~~

~~(f) A “no further action” determination may be issued by the department to contaminated, adjacent properties if the property that is the source of the contamination has applied and been accepted into the voluntary cleanup and property redevelopment program or if the property is being addressed by the department or the United States environmental protection agency through another program. The following requirements shall be met for those properties qualifying for a “no further action” determination under this subsection.~~

~~(1) The owner or operator, or both, of the adjacent property shall submit a complete application to the department, including environmental assessments and investigations.~~

~~(2) Determination that the contamination on the subject property resulted from an off-property source shall be made by the department.~~

~~(3) The department determines that there is no on-site source of contamination, including soil contamination.~~

~~(4) The department determines that the likely source of contamination exists nearby and its location may allow contamination to migrate onto the subject property.~~

~~(5) The owner or operator, or both, of the adjacent property documents that the past and current use of the property would not have contributed to the contamination of soils, surface water or groundwater.~~

~~(6) The owner or operator, or both, of the adjacent property agrees to fully cooperate and~~

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~~allow reasonable access for the investigation and cleanup of the contamination for the source property.~~ Each voluntary party shall demonstrate to the department that the following conditions have been met to receive a “no further action” determination for class one contamination:

(1) The owner or operator of the property, or both parties, submit a complete application to the department, including environmental site assessments and investigation reports.

(2) A determination that the contamination on the property resulted from an off-property source is made by the secretary.

(3) A determination that there is no on-site source of contamination, including soil contamination, is made by the secretary.

(4) The owner or operator of the property, or both parties, document that the past and current use of the property did not contribute to the contamination of soils, surface water, or groundwater.

(c) Each voluntary party shall demonstrate to the department that the following conditions have been met to receive a “no further action” determination for class two contamination:

(1) No contamination was detected.

(2) Contamination was detected, and following review of the environmental site assessment, investigation reports, and remediation reports, or a combination of these, the secretary has determined that contamination levels do not present significant risk to human health and the environment and, based on those levels, are less than applicable federal or state standards or site-specific cleanup levels as specified in K.A.R. 28-71-11.

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(3) Contamination does not exceed acceptable contaminant concentrations as determined by the secretary in a site-specific qualitative risk analysis that evaluates the property and surrounding properties as a whole.

(d) Each voluntary party shall demonstrate to the department that the following conditions have been met to receive a “no further action” determination for class two contamination with conditions:

(1) Site conditions described in paragraph (c)(2) or (c)(3) have been met.

(2) Secretary-approved controls, including institutional controls, environmental use controls, a risk management plan, or a combination of these restricting the use of a property, are in place to ensure continued protection of human health and the environment. (Authorized by K.S.A. ~~1997~~ Supp. 65-34,163; implementing K.S.A. ~~1997~~ 2016 Supp. 65-34,169; effective June 26, 1998; amended P-_____.)

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28-71-11. Remedial standards and remedial actions. (a) All remedial alternatives performed by the voluntary party and approved by the ~~department~~ secretary shall attain a degree of cleanup, control, or both, of contaminants that ensures protection of human health and the environment.

(b) All ~~cost-effective~~ remedial actions to restore the environment to conditions before its altered state, ~~including innovative technologies and natural processes~~, shall be considered by the department if the protection of human health and the environment is maintained, ~~the future degradation of the natural source is minimized~~, and the movement of contaminants is controlled.

(c) ~~Responsibility for reviewing and approving the approach and final selection of cleanup levels shall rest with the department.~~ The voluntary party ~~may select~~ shall propose any one of the following ~~three~~ approaches to determine cleanup levels for the property:

(1) ~~Department approved methods to determine~~ Comparison to background levels;

(2) comparison to department-established risk-based levels; ~~or~~

(3) comparison to a site-specific, risk-based quantitative analysis conducted by the voluntary party or the department, based on ~~department approved~~ formulas, exposure parameters, and ~~department approved~~ land-use scenarios; or

(4) other risk analysis methods approved by the secretary.

(d) Responsibility for reviewing and approving the approach and final selection of cleanup levels for property subject to the voluntary agreement shall rest with the secretary.

(1) The selection of cleanup levels shall be based on the present and proposed future uses of the property and surrounding properties.

(2) Land use shall include two general categories: residential property and nonresidential property.

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~~(e)~~ (3) Multiple media, exposure pathways, and contaminants shall be taken into account during the determination of cleanup levels.

~~(f)~~ (4) Existing and applicable federal or state standards shall be considered by the department during the determination of cleanup levels.

~~(g)~~ (c) ~~Institutional controls that restrict the use of a property~~ Secretary-approved controls, including the controls specified in K.A.R. 28-71-10, may be required by the department to ensure continued protection of human health and the environment.

(1) Institutional Approved controls for the property subject to the voluntary agreement shall not be proposed as a substitute for evaluating remedial actions that would otherwise be technically and economically practicable.

(2) Institutional Approved controls for the property subject to the voluntary agreement ~~that are approved by the department~~ shall be considered as remedial actions.

~~(3) Institutional controls for the property shall be described in a restrictive covenant approved by the department, executed by the property owner, and recorded with the register of deeds for the county in which the property is located. These restrictive covenants shall remain in effective and be binding on the owner's successors and assignees until approved otherwise by the department in writing.~~

~~(h)~~ (f) Soil cleanup levels and the depths to which the cleanup levels shall apply shall be based on human exposure, the present and proposed uses of the property, the depth of the contamination, and the potential impact to groundwater, surface water, or both, and any other risks posed by the soil contamination to human health and environment. ~~One of the following~~

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~~approaches to soil cleanup shall be selected by the voluntary party and approved by the department.~~

~~(1) In the event that naturally occurring levels of an individual contaminant in the soil exceed the cancer risk level of 1×10^{-6} , one in 1,000,000, or a hazard index value of 1.0, then the background level may be the cleanup level.~~

~~(2) In the event that anthropogenic levels of a contaminant in soil exceed the cancer risk level of 1×10^{-6} , one in 1,000,000, or a hazard index value of 1.0, then a 1×10^{-5} , one in 100,000 cancer risk level, or a level corresponding to a hazard index value equal to 1.0 may be used as the cleanup levels.~~

~~(3) A property specific risk analysis performed by the voluntary party in accordance with the department's scope of work shall be used to determine a chemical specific cleanup level of less than the cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value equal to 1.0.~~

~~(i) (g) Soil and groundwater property-specific cleanup levels shall may be determined by the ~~department~~ secretary for contaminants for which there is insufficient toxicological evidence to support a regulatory standard for risk-based cleanup levels or for nontoxic contaminants for which cleanup is required as a result of other undesirable characteristics of those contaminants. These The soil levels shall be based on the following:~~

~~(1) The ability of the impacted soil to support vegetation representative of unimpacted properties in the vicinity of the eligible property subject to the voluntary agreement; and~~

~~(2) the potential of the contaminant to impact and degrade groundwater, surface water, or both, through infiltration or runoff.~~

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~~(j)~~ ~~(h)~~ ~~When~~ If there are multiple contaminants in the soil, the cleanup level of each contaminant shall not allow the cumulative risks posed by the contaminants to exceed a cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value of 1.0.

~~(k)~~ ~~(i)~~ ~~The department shall approve~~ Soil cleanup levels ~~to insure~~ shall ensure that migration of contaminants in the soil shall not cause the cleanup levels established for groundwater, surface water, or both, to be exceeded.

~~(l)~~ ~~(j)~~ Groundwater cleanup levels shall be based on the actual and most ~~beneficial~~ probable use of the groundwater considering present and ~~proposed~~ future uses. The most ~~beneficial~~ probable use of the groundwater is for a potable water source, unless demonstrated otherwise by the voluntary party and approved by the ~~department~~ secretary. ~~The most beneficial use of the groundwater shall be determined by the department based on available existing documentation, as well as documentation provided by the voluntary party.~~

~~(m)~~ ~~(k)~~ Groundwater potentially or actually used as a potable water source and impacted by the site contamination shall require maximum protection in determining cleanup levels.

~~(n)~~ ~~(l)~~ ~~The department shall approve cleanup levels that prevent additional degradation of the groundwater caused by contaminant migration and that encourage remedial actions to restore contaminated groundwater to the groundwater's most beneficial use~~ Remedial action to restore contaminated groundwater shall, at a minimum, prevent additional degradation and migration.

~~(o)~~ ~~One or a combination of the following approaches to groundwater cleanup shall be selected by the voluntary party and approved by the department.~~

~~(1) In the event that natural occurring levels of an individual contaminant in groundwater~~

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~~exceed the cancer risk level of 1×10^{-6} , one in 1,000,000, or a hazard index value of 1.0, then the background level may be the cleanup level.~~

~~(2) In the event that anthropogenic levels of an individual contaminant in groundwater exceed the cancer risk level of 1×10^{-6} , one in 1,000,000, or a hazard index value of 1.0, then the maximum contaminant levels (MCLs) established by the federal government or a cancer risk level of 1×10^{-5} , one in 100,000, or a level corresponding to a hazard index value equal to 1.0 shall be the cleanup level.~~

~~(3) In the event that the chemical-specific maximum contaminant levels (MCLs) are not applicable, a property specific risk analysis performed by the voluntary party in accordance with the department's scope of work shall be used to determine a chemical-specific cleanup level of less than the cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value equal to 1.0.~~

~~(p)~~ (m) When the need for cleanup of a contaminant ~~may~~ can be predicated on characteristics of that contaminant other than toxicity, including the contribution of an undesirable taste or odor, or both, the site-specific cleanup level as determined by the department or secondary ~~MCLs shall~~ maximum contaminant levels (MCLs) may be used as cleanup levels for contaminants for which insufficient toxicological evidence has been gathered to support a regulatory standard for risk-based cleanup levels or nontoxic contaminants. These levels shall be based on the aesthetic quality and usability of the groundwater, surface water, or both, for the present and proposed future use.

~~(q) When there are multiple contaminants in the groundwater, the cleanup level of each contaminant shall be such that the cumulative risks posed by the contaminants shall not exceed a~~

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~~cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value of 1.0.~~

(~~r~~) (n) Surface water cleanup levels shall meet the Kansas surface water quality standards, as ~~defined~~ specified in K.A.R. ~~28-16-28b, et seq.~~ 28-16-28e. (Authorized by K.S.A. ~~1997 Supp.~~ 65-34,163; implementing K.S.A. ~~1997~~ 2016 Supp. 65-34,167 and K.S.A. 2016 Supp. 65-34,168; effective June 26, 1998; amended P-_____.)

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28-71-12. Public notification and participation. (a) ~~When a cleanup plan has been accepted by the department, and after consultation with the applicant, a notice of the department's acceptance shall be published by the department in a local newspaper of general circulation in the area affected. Notice shall be provided by one or more of the following methods:~~

~~(1) Display advertisement;~~

~~(2) legal notice; or~~

~~(3) published notice with direct notice to any other appropriate entities, including appropriate units of local government.~~

~~(b) The cleanup plan shall be made available by the department to the public upon request.~~

~~(c) All public notices shall indicate the public comment period for the cleanup plan. The comment period shall extend no fewer than 15 days from the date of posting the notice.~~

~~(d) The public shall have the opportunity during the public comment period to submit to the department written comments regarding the cleanup plan. Written response shall be made by the department to those written comments from the public that directly concern the cleanup plan.~~

~~(e) (b) Following the 15-day public comment period, a public information meeting may be held by the department if, in the department's judgment, the public comments on the voluntary cleanup plan submitted warrant a meeting or The voluntary party requests a meeting or a member of the public may request a meeting following the 15-day public comment period.~~

~~(f) (1) The public information meeting shall provide the public with information about relevant activities at the property associated with the voluntary cleanup and property redevelopment program. Public information meetings shall be attended by a member of the~~

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department and the voluntary party or designated representative, or both.

(g) (2) A notice to the city, the county, or both, of the public information meeting shall be provided by the department.

~~(h) Upon completion of the public notification and participation process, a determination to approve or disapprove the cleanup plan shall be made by the department.~~ (Authorized by K.S.A. ~~1997~~ Supp. 65-34,163; implementing K.S.A. ~~1997~~ 2016 Supp. 65-34,168; effective June 26, 1998; amended P-_____.)

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